Supreme Court, U.S.
FILED

No. 06-914 DEC 19 2006

OFFICE OF THE CLERK

In The
Supreme Court of the United States

JOYCE ANNE DABISH

Petitioner,

v.

DAIMLERCHRYSLERCORPORATION, INTERNATIONAL UNION, AUTOMOBILE, AEROSPACE AND AGICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; WORKERS UAW LOCAL 1264.

Respondents.

ON PETITION FOR A WRIT OF CERTIORI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CONNYE Y. HARPER, (P-25448)
8000 East Jefferson Avenue
Detroit, MI 48214
(313) 926-5000

LISA S. LANE
33 Bloomfield Hills Parkway, Suite 120
Bloomfiled Hills, MI 48304-2945
(248) 593-6400
(Counsel of Record for Respondents)

JOYCE ANNE DABISH
41001 East Rosewood
Clinton Twp., MI 48038-4902
(586) 263-3308
In Pro Se

QUESTIONS PRESENTED

Did the Sixth circuit of Appeals properly deny Plaintiff's appeal to reverse summary judgment for defendants from decision of the District Court?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF CITED AUTHORITIES.....	iii
TABLE OF APPENDICES.....	iv
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT.....	1
RULES INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	3
CONCLUSION.....	11

TABLE OF CITED AUTHORTIES

Cases: *Page*

Garrison v. Cassen Transp. Co.
334F.3d 528, 538(6th Cir. 2003)..... 7

Statutes:

28 U.S.C. , 1254 (1) 1

Rules:

Fed. R. iv. P. 60(b)..... 2

TABLE OF APPENDICES

Page

Appendix A-----Order Of The United States of Court Of Appeals. For The Sixth Circuit Filed September 21, 2006..... 1a

Appendix B-----Opinion And Order Of The United States District Court For The Eastern District Of Michigan, Southern Division Granting Defendants Motion For summary Judgment
Dated March 31, 2004..... 6a

Appendix C-----Judgment Of Dismissal Of The United States District
Court For The Eastern District Of Michigan, Southern Division
Dated March 31, 2004..... 32a

OPINIONS BELOW

The September 21, 2006 Order of the United States Court of Appeals for the Sixth Circuit is unreported, and is attached hereto as page 1a of the Appendix to the Petition for a Writ of Certiorari. The Order of the United States District Court for the Eastern District of Michigan dated March 3`1, 2004 is unreported and attached hereto as pages 7a -22a of the Appendix. The Judgment of the District Court dated March 31, 2004 is unreported and attached hereto as page 23a of the Appendix.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. ,1254 (1). The Sixth Circuit Court of Appeals issued its last decision on September 21, 2006.

RULES INVOLVED

Federal Rules Of Civil Procedure: Rule 60 (b) Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, or order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., , 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela,

and bills of review and bills in the nature of bill of review, are abolished, and the procedure for obtaining and relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT OF THE CASE

Plaintiff Petitioner Joyce Anne Dabish ("Plaintiff") filed the underlying lawsuit against Defendant Appellee Daimler Chrysler ("Defendant"), and the UAW, in pro se on June 26, 2002. Plaintiff retained E. Patrick Murray, who finally filed a First Amended Complaint on October 21, 2002., alleging Breach of Contract against DaimlerChrysler (Count I), Breach of Fiduciary Duty against DaimlerChrysler (Count II), Breach of Contract and Breach of Fiduciary Duty against the UAW (Count III) under Section 301 0f the LMRA and ERISA, and Wrongful Termination Against Public Policy against DaimlerChrysler under Michigan common law (Count IV). After the complaint was denied the Plaintiff retained David M. Sinutko who forced the Plaintiff to to file an appeal to the Sixth Circuit instead of filing a motion to remand back to the Detroit Federal District Court under FRCP Rule 60. The Plaintiff was not aware of that Rule and David Sinutko never told the Plaintiff of that filing option.

REASONS FOR GRANTING THE PETITION

In the suit Plaintiff stated that she was wrongfully terminated. The Plaintiff did sign the "Letter" only after being assured by both Tom Nizich and Kathleen Scorpio that if the Plaintiff did

not sign the so-called "Final Retirement Papers" that the Plaintiff would not have to retire. In their Opinion dated September 21, 2006 the Court of Appeals states:"In early June, after receiving notice from DaimlerChrysler that her retirement date would be June 30, Dabish changed her mind about retiring." That statement does not reflect the actual facts. On or about May 30, 2002 the Plaintiff determined that a retirement was not a financial possibility. On June 5, 2002 the Plaintiff notified Alvin Davis by letter of the wish to rescind the "Letter." As of that date the Plaintiff HAD NOT been notified by DaimlerChrysler of any retirement dates. The Court of Appeals also states in that same Opinion: "However, she was held to her irrevocable election to retire." That statement also does not reflect the actual facts. The Plaintiff arrived at 5am July 1, 2002 to report for work in the normal work area. The Plaintiff was able and available and seeking work in the regular department job site. The Plaintiff was told by Hakim Berry who was at that time the assistant Labor Relations supervisor and who informed the Plaintiff that the Computer automatically retired all employees who signed the so-call "Conditional Retirement Letter." The Plaintiff informed Supervisor Berry that the "Final Retirement Papers" had never been signed by the Plaintiff. Supervisor Berry stated that the signing of the papers did not mater. A point supported by Miss Lane in her Court of Appeals brief. Miss Lane stated that the "Final Retirement Papers" were not retirement documents; they were merely for medical, life and pension payment determinations and did not prevent DaimlerChryler from forcing an employee to leave any Chrysler Plant because the National agreement permitted that action.. Miss Lane's statements prove the Petitioner was deceived by Tom Nizich and Kathleen Scorpio who both told the Plaintiff that if the

"Final Retirement Papers" were not completed the Plaintiff would not have to retire. The issue of the "Final Retirement Papers" being of any retirement significance was clearly a lie and the fact that the statements of Tom Nizich and Kathleen Scorpio were lies is supported by Miss Lane's brief. Also, the statement that the Plaintiff "was held to her irrevocable election" does not reflect the reality of the scene at Sterling Stamping Hakim Berry forced the Plaintiff to leave the work area at Sterling Stamping as well as forcing the Plaintiff to leave Sterling. Stamping. Forcing an employee to leave the job site cannot be construed as a "voluntary" election to retire. The Plaintiff filed In Pro Se June 26, 2002 charging wrongful termination and breach of contract by both DaimlerChrysler and the UAW along with the Sterling Stamping Plant and the Plaintiff's local union UAW Local 1264. The Plaintiff retained E.Patrick Murray to defend the allegations relevant to the Plaintiff's job loss. The Court of Appeals states in It's Opinion that the Plaintiff argued that Mr. Murray was "ineffective." The Court of Appeals needs to produce the documents where the Plaintiff used that description. The Plaintiff stated quite clearly that NO DEFENSE was received from E. Patrick Murray. Judge Gerald E. Rosen ruled against the Plaintiff because Mr. Murray did not brother to locate the evidence that would have supported the Plaintiff's position. That kind of action is not a case of being "ineffective"; that clearly is INCOMPETENCE. The Plaintiff was clearly victimized by a lawyer who had about as much intent to defend the Plaintiff as the Hamas Terror Group has intentions to recognize the state of Israel. The Court of Appeals stated that the Plaintiff was given a lump sum cash payment and a car voucher. The lump sum payment was eighteen thousand eight hundred dollars ($18,800.00before taxes. That payment did

not pay the balance on the Plaintiff's mortgage or balance on the car note. The Plaintiff never received the car voucher. Neither Tom Nizich or Kathleen Scorpio bothered to inform thePlaintiff that the so-callled monthly pension payment of two thousand two hundred and two dollars ($2,202.00) was temporary and would dropped by one thousand one hundred and thirteen dollars ($1,113,00) when the Plaintiff became sixty-two (62). DaimlerChrysler did not negotiate a retirement plan; rather the "Letter" was an "employee dump "whose sole purpose was to save the Company money on employee pension payments. The Plaintiff although not aware in 2002 of the pension payment change due at age sixty two (62) feared of having adequate funds to pay the household bills. In July of 2004 the mortgage company filed for a foreclosure. On July 30, 2004 the Plaintiff filed the "Final Retirement Papers in a futile attempt to stop a further financial decline. The lump sum payment was used to pay off a second home equity loan. There was not enough money to pay off the mortgage because the Plaintiff was sixty-three (63) and had already suffered a decrease in the monthly pension payment. On September 30, 2004 the Plaintiff was diagnosed with breast cancer. Unable to work most of 2005 the Plaintiff's mortgage company filed for another foreclosure on December 15, 2005. Out of desperation the Plaintiff filed for a Chapter 7 bankruptcy on January 26,2006. However, the bankruptcy was discharged on May11, 2006 and the mortgage company filed for another foreclosure June 19, 2006. The Sheriff's Sale was held July 28, 2006. The statement of the Appeals Court as to the reasons why the Plaintiff wanted to rescind the "Letter" had clearly no basis no fact. The Plaintiff was trying to stop financial ruin which occurred just as predicted with the exception of the breast cancer which was clearly unforeseen. But even with the breast

cancer the Plaintiff had received the pension amount promised, the financial ruin would not have happened in such a disastrous sequence. David M. Sinutko the second lawyer the Plaintiff retained was clearly a case of out of the frying pan into the fire. Instead of having the Plaintiff file a motion to remand the case back to the Federal District Court in Detroit; David Sinutko forced the Plaintiff to file for an appeal to the Sixth Circuit. Mr. Sinutko was also a case of not being "ineffective" but clearly INCOMPETENT. To complete his climb to the highest level of his brand of incompetency; David Sinutko "client-dumped' the Plaintiff on the grounds of non-payment of legal fees when he was fully aware of the Plaintiff's financial situation and then threatened to sue the Plaintiff for unpaid legal fees. The Court of Appeals stated that the Plaintiff "argues at length that the incentive program was clearly unfavorable to her, she has failed to explain her conclusion," The Plaintiff has clearly shown that the incentive program was "unfavorable" by causing the following situations: (1) complete financial ruin to the Plaintiff; (2) causing the Plaintiff to be victimized by two INCOMPETENT lawyers; and (3) causing the Plaintiff to lose everything that the Plaintiff has spent a lifetime working for because there was no job to save the Plaintiffs property. The Court of Appeals stated that the Union did not breach it's fiduciary duty to the Plaintiff citing Garrison v. Cassens Transp. Co.,334 F.3d 528, 538(6th Circuit). The motive of the Union in this case is clearly not the same as in the Garrison case. The Company went to Nate Gooden who at that time was the UAW DaimlerChrysler vice-president. They told Nate Gooden that they wanted to dump three hundred employees from Sterling Stamping. The Union agreed to help the Company "dump" the employees for some consideration from the Company. The

live-in female friend of Nate Gooden owned a Janitor Service and in exchange for helping the Company draft the "Letter" the Company hired non-union janitors from the service of Nate Gooden's friend at Jefferson North, Jeep Toledo and the Sterling Heights Assembly Plant and other DaimlerChrysler Plants. At time of his death November 7, 2006 Nate Gooden was under investigation by the United States Attorneys's Office in Detroit, Michigan for several corruption charges. Clearly the Union breached it's fiduciary duty to the Plaintiff. In June of 2002 the Plaintiff was referred to James Davis who was one of the members of the "Retirement Letter Four" Committee that drafted the so-called "Conditional Retirement Letter." James Davis at that time was head of the National Training Center. He would not see or speak to the Plaintiff but an unknown male person from his office told the Plaintiff: "We stand by what we negotiated, We gave the Company what they wanted and we are not changing anything for any one." Clearly that statement is proof that the Union worked for the Company's interests and not for the interests of the Sterling Stamping Plant employees who were all dues paying union members. The so-called "Conditional Retirement Letter" was essentially a mechanism designed for the sole purpose of dumping unwanted employees in order to save the Company money on the employee's pension payments. Deception was clearly the name of this game. The pension information given to the Plaintiff clearly did not state to the Plaintiff that at age sixty-two (62) there would be a reduction in the Company pension. The information given to the Plaintiff did not state that their was an appeal procedure provided in the then current DaimlerChrysler-UAW National Agreementthat would have permitted the Plaintiff to file an immediate appeal to the "Letter." Tom Nizich was careful not to provide that

information to any of the two hundred and eighty-two(282) employees who were all forced out by June 30, 2002. The Plaintiff was forced out July 1,2002. The Plaintiff's "retirement" cannot be considered "voluntary" when the Company admitted forcing the Plaintiff to leave the Sterling Stamping Plant. The Plaintiff did undergo a deposition on Thursday December 5, 2002. The Plaintiff stated during that deposition that the "Letter" was not valid because: (1) the document was dated incorrectly; and (2) the document was not date-stamped and therefore there was no proof of when the document was submitted to the Hourly Plant Employment Office. The Plaintiff's forceout from the Sterling Stamping Plant was not valid, (1) since none of the above issues had been addressed let alone resolved; and (2) the Plaintiff should have been allowed to remain while the appeal process as outlined in the 2002 UAW DaimlerChrysler Contract was completed. The complicity of the Union in helping to deceive the Sterling Stamping Plant employees is absolutely evident in the actions of Tom Nizich who wrote a letter on June 18, 2002 to Gil Wojick who was a member of the "Retirement Letter Four" Committee that negotiated the "Letter." Tom Nizich submitted the names of seven employees including the Plaintiff asking Gil Wojick to rescind the "Letter" for all seven employees. Gil Wojick did not send his letter until June 28, 2002 and the letter was sent to Tom Nizich's home address in Livonia. On Wednesday June 26, 2002 Tom Nizich placed a call to Gil Wojick who informed Tom Nizich that none of the seven employees would be given consideration by the Company. The letter of Tom Nizich was a hoax and a fraud. The letter shoul have been sent at the beginning of June 2002 and the letter should have been directed to Nate Gooden since he was the UAW DaimlerChrysler vice-president as well as

the chairmen of the committee that negotiated the "Letter." The Union clearly did wish to help any of the union members and they still do not. The Plaintiff has been engaged in a letter writing effort to obtain assistance from both Nate Gooden and his successor General Holiefield with no response. Clearly this is not the Union of Walter Reuther. He would never have agreed to such a "Letter" and he would never have abandoned any union member in the manner that the UAW abandoned the Plaintiff. This decision needs to be overturned to protect all working people from being victimized in the work place by the very people that are should be protecting their rights as employees and as working people. The "Letter" is not valid because; (1) the incorrect date, (2) the "Letter" was not date stamped to prove when the "Letter" was received by the Hourly Plant Employment Office and (3) the proof of receipt must be confirmed otherwise (4) the Plaintiff is being swindled out of her job by a signature and (5) that signature has to be validated to its appropriate date of acceptance with the appropriate documentation.

CONCLUSION

For the foregoing reasons, Plaintiff-Petitioner , respectfully requests the Petition for Writ of Certiorari be granted.

Respectfully submitted,

Joyce Anne Dabish
In Pro Se
41001 East Rosewood
Clinton Twp, MI 48038
(586)263-3308

APPENDIX

APPENDIX A - OPINION AND ORDER OF THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS DENYING PLAINTIFF'S APPEAL TO REVERSE ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANTS

No. 04-1583

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOYCE ANNE DABISH PLaintiff-Appellant, v. DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264 Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: NORRIS, COLE, and COOK, Circuit Judges.

Joyce Anne Dabish, a Michigan citizen, moves for the appointment of counsel and appeals the summary judgment for defendants in an action filed pursuant to the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, and the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit.

Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a). Dabish filed this action against her former employer and her local and international union. Dabish was employed by DaimlerChrysler from 1976 to 2002. In 2002, the company and union negotiated an incentive program to encourage voluntary retirement by eligible employees. The program offered a lump sum cash payment and a voucher for the purchase of a Chrysler vehicle. Dabish was eligible to retire, and received a copy of the offer on March 13, 2002. The offer stated that the plan had to be signed by March 28, and that, if accepted, it would become irrevocable after March 28.. Dabish alleges that she asked two union representatives whether she could sign the offer and still change her mind, and that both representatives assured her she could change her mind up until she signed final retirement papers. Dabish signed the offer on March 25, and submitted it that same day. In early June, after receiving notice from DaimlerChrysler that her retirement date would be June 30, Dabish changed her mind about retiring. However, she was held to her irrevocable election to retire. She alleged that defendants breached the collective bargaining agreement and the duty of fair representation, and violated ERISA.

Defendants filed separate motions for summary judgment, to which Dabish responded. The district court granted defendants' motions, and this appeal followed. Dabish twice moved to remand this case to the district court, arguing that her counsel below was ineffective and that she should be able to submit additional evidence in support of her claims. The motions were denied, and reconsideration of the denial was also denied. In her briefs, she reasserts her claims, and also argues that defendants failed to prove that she signed and

submitted the agreement to retire within the open period, pointing out that she misdated her signature as 4/25/02, rather than 3/25/02. However, at her deposition, she admitted that she signed and submitted the paperwork on March 25. We review an order granting summary judgment de novo. *E.g., Bender v. Hecht's Dep't Stores,* 455 f.3d 612, 619 (6th Cir. 2006). De novo review in this case reveals that defendants were properly granted summary judgment, as there is no genuine issue of material fact. *Farhat v. Jopke,* 370 F.3d 580, 587 (6th Cir. 2004)

Dabish alleges a breach of the collective bargaining agreement because she was not permitted to recind her election to retire, contrary to the advice she allegedly received from two union representatives. However, the advice from the union representatives was not the collective bargaining agreement. A collective bargaining agreement supersedes an individual employment contract to the extent they are inconsistent. *Loewen Group Int'l, Inc. v. Haberichter*, 65 F.3d 1417, 1423 (7th Cir. 1995). In this case, the agreement provided that it was irrevocable after March 28, 2002. Dabish's individual understanding that she could revoke her acceptance beyond that date is superseded by the agreement. Therefore, no breach by the employer was established. Dabish also alleged that her union breached the duty of fair representation. Absent a breach of the collective bargaining agreement, this claim fails. *Garrison v. Cassens Transp. Co.*, 334 F.3d 528, 538 (6th Cir. 2003). Moreover, Dabish had to show that the union's conduct was arbitrary, discriminatory, or in bad faith to demonstrate a breach of the duty of fair representation. *Id.* The union's failure to take her side in her attempt to rescind her agreement was not shown to be arbitrary, discriminatory, or in bad faith. Dabish argues for the

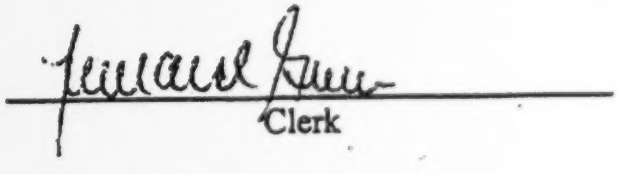
first time on appeal that the union breached its duty of fair representation in negotiating the retirement incentive offer. However, she also fails to show how this was arbitrary, discriminatory, or in bad faith. The offer was favorable to Dabish, giving her a lump sum payment and a voucher towards the purchase of a vehicle, in addition to the retirement benefits to which she was entitled. Although Dabsh argues at length that the incentive program was clearly unfavorable to her, she has failed to explain her conclusion.

Dabish also alleged a violation of ERISA. The district court noted that a claim to set aside an early retirement agreement, not to recover under it or enforce it, is not preempted by ERISA. *Warner v. Ford Motor Co.*, 46 F.3d 531, 534 (6th Cir. 1995) Even if ERISA were implicated in this case, "the plain language of an ERISA plan must be enforced in accordance with 'its literal and natural meaning.'" *United McGill Corp. v. Stinnett,* 154 f.3d 168, 172 (4th Cir. 1998) (*quoting Health Cost Controls v. Isbell*, 139 F.3d 1070, 1072 (6th Cir. 1997)). Oral modifications to an ERISA plan are not permitted. *Schmidt v. Sheet Metal Workers' Nat'l Pension Fund*, 128 F.3d 541, 546 (7th Cir. 1997). Therefore, Dabish's allegation that she received a different plan orally than what she signed fails. Finally, Dabish's alleged reliance on the statements of the union representatives would not be deemed reasonable or justifiable, because the oral representations were inconsistent with the clear and unambiguous terms of the plan document. *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 404 (6th Cir. 1998).

For all of the above reasons, defendants were entitled to judgment as a matter of law. The motion for counsel is therefore denied, and the district court's order is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

No. 04-1583

ENTERED BY ORDER OF THE COURT



Clerk

APPENDIX B - OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DATED MARTCH 31, 2004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 02-72659
Hon. Gerald E. Rosen

JOYCE ANNE DABISH

PLaintiff,

v.

DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264

Defendants.

OPINION AND ORDER GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on *Mar 31, 2004*

PRESENT: Honorable Gerald E. Rosen
United States District Judge

Appendix E

I. INTRODUCTION

Plaintiff Joyce Anne Dabish filed a *pro se* complaint with this Court on June 26, 2002, seeking to revoke her acceptance of an early retirement offer made by her employer, Defendant DaimlerChrysler Corporation, and negotiated by her collective bargaining representative, Defendant UAW Local 1264. In an October 21, 2002 first amended complaint filed on fer behalf by her present counsel, Plaintiff advances claims under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C.§ 185, the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and Michigan common law, all in an effort to rescind her apparent acceptance of DaimlerChrysler's early retirement offer.

By motions filed on February 28, 2003 and March 4, 2003, respectively, Defendants DaimlerChrysler and UAW Local 1264 now seek summary judgment in their favor on all of Plaintiffs claims, state and federal alike. In untimely responses filed on May 30, 2003 and June 2, 2003, Plaintiff concedes that she cannot pursue a state-law claim of wrongful termination in violation of public policy, where any such state-law claim surely would be preempted by federal labor law in light of Plaintiff status as member of UAW Local 1264 whose employment with DaimlerChrysler was governed by a collective bargaining agreement. Nonetheless, Plaintiff contends that she has produced sufficient evidence in support of her breach-of-contract and ERISA claims, where she purportedly was told by union representatives that she could revoke her acceptance of the early retirement plan at any time up until she executed the final retirement paperwork.

Defendants filed reply briefs in further support of their motions on June 11 and 12, 2003.

Having reviewed the parties' submissions and the record as a whole, the Court finds that these materials sufficiently disclose the relevant allegations, facts, legal arguments, and that oral argument would not significantly aid the decisional process. Accordingly, the Court will decide Defendants' motions "on the brief." See Local Rule 7.1(e)(2), U.S. District Court, Eastern District of Michigan. This Opinion and Order sets forth the Court's rulings.

II. FACTUAL BACKGROUND

The pertinent facts of this case are relatively straightforward. Moreover, there is scant opportunity for dispute of these facts, where Plaintiff took no depositions, Defendants apparently deposed only Plaintiff herself, and the record otherwise consists almost entirely of materials related to the early retirement offer extended by Defendant DaimlerChrysler to certain of its hourly employees, including Plaintiff.

Plaintiff Joyce Ann Dabish has been employed by Defendant DaimlerChrysler Corporation since September of 1976, and was 61 years old at the time she commenced this suit. At all relevant times, Plaintiff worked as an hourly production worker at DaimlerChrysler's Sterling Stamping Plant in Sterling Heights, Michigan. The terms of Plaintiff's employment were governed by a collective bargaining agreement ("CBA") between DaimlerChrysler and the Defendant UAW.

In March of 2002, DaimlerChrysler promulgated an

Appendix E

Incentive Program for Retirements ("IPR") for eligible union-represented hourly employees at several of the company's manufacturing facilities, including the Sterling Stamping Plant. The IPR was negotiated with the UAW as part of DaimlerChrysler's company-wide effort to reduce its work force through voluntary attrition. The IPR offered cash incentives and vehicle vouchers, but did not alter the pension or other benefits an employee otherwise would receive upon retirement.

The IPR was offered to employees in the form of a App. 10 letter describing the program, which was captioned "2002" Incentive Program for Retirements Conditional Offer Letter." (First Amended Complaint, Ex. A.) The letter established a "conditional offer period from March 13, 2002 through March 28, 2002," during which the employee was required to sign and date the form to indicate his or her acceptance or rejection of the offer. (Id.) In the section to be signed by employees who accepted the offer, the letter stated:

> I hereby accept this conditional offer under the Incentive Program for Retirements. The effective date of my retirement will be April 30, 2002 unless a two-month extension of my retirement date is required by Management.
>
> I acknowledge that Management will make the final determination of my retirement date and may require a two-month extension of my retirement date to June 30, 2002.
>
> I acknowledge that Management will make a final selection of separations to be accepted under this

Program on the basis of corporate service.

I acknowledge that I have had reasonable time to consider this conditional offer, that I have been informed to discuss it with my attorney and/or financial advisor, and that my acceptance of this conditional offer is completely voluntary on my part and was in no way forced upon me by DaimlerChrysler Corporation.

I acknowledge that my election to separate under this Incentive Program for Retirements is irrevocable after March 28, 2002 by me or by others.

In January of 2002, Plaintiff attended a regular membership meeting of UAW Local 1264, and learned that an early retirement offer would be forthcoming. On January 24, 2002, she received an estimate of her benefits under the DaimlerChrysler – UAW pension plan. When Plaintiff arrived at work on March 13, 2002, she received a copy of the above-cited IPR letter, accompanied by a package of materials that further explained this early retirement offer and estimated the retirement benefits Plaintiff would receive if she accepted. These materials reiterated that "[i]f you accept this conditional offer, you must retire on the date indicated in your offer letter, subject to any determination by Management that an extension of that date is needed and also subject to any conditional terms that the application for retirement be accepted by Management as indicated in your conditional offer letter." (Plaintiff's Response, Ex. IPR package at 2,)

On March 18, 2002, UAW Local 1264 conducted an informational meeting to "explain all options available to members who have received an I.P.R. package." (Plaintiff's

Response, Ex. 4.) Because of a doctor's appointment, Plaintiff was unable to attend this meeting, but she was assured that she could contact her union representatives to address any questions she might have about the early retirement offer. Accordingly, on March 25, 2002, Plaintiff went to the Local 1264 office and met with two union benefit representatives, Tom Nizich and Kathy Scorpio-Butina.

This March 25, 2002 meeting is pivotal to Plaintiff's claims in this case. According to the complaint and the testimony at her deposition, Plaintiff had not yet signed her offer letter, and still had not made up her mind whether to accept the offer. Plaintiff testified that she asked Nizich and Scorpio-Butina, "If I sign this letter, and later I decide that I can't go through with this retirement, can I still change my mind?" (Plaintiff's Dep. At 39) According to Plaintiff, both Nizich and Scorpio-Butina assured her that "[y]ou have until the day you sign the final retirement paper to change your mind." (Id.) There was no discussion of the language of the IPR letter stating that an employee's acceptance was "irrevocable after March 28, 2002." Plaintiff signed the letter that same day, indicating her acceptance of the IPR offer.[1] She acknowledge at her deposition that she read the entire letter before she sign it, including that statement tat her acceptance was "irrevocable." (Plaintiff's Dep. At 109,112.)

---

[1]To the accurate, letter reflects a signature date of ***April*** 25, 202. (See Complaint, Ex. A.) Plaintiff confirmed at her deposition, however, the date is incorrect, and that she actually signed the letter on March 25, 2002. (See Plaintiff's Dep. At 35, 40.)

Appendix E

On June, 2005 Morris Simms, DaimlerChrysler's Senior Manager of Human Resources at the Sterling Stamping Plant, approved Plaintiffs eligibility for IPR offer, and established June 30, 2002 as her retirement date. That same day, however, Plaintiff submitted a letter to Alvin Davis, the supervisor of the union relations at the plant, stating that "I do not wish to accept the retirement package" and "do not wish to retire on June 30, 2002." (Plaintiff Response, Ex. 7.) On June 10, 2002, Plaintiff sent another letter to Davis, reiterating her desire to decline the early retirement offer and continue working. (Plaintiff's Response, Ex. 8.)

Following this initial correspondence, Plaintiff sent two additional letters to more senior UAW officials, stating that she had been told by Tom Nizich that "I could reverse my decision to retire by not signing the final retirement papers," but that Nizich now was "saying the Company will force me to retire." (Plaintiff's Response, Ex. 9.)[2] In response, Plaintiff received a June 20, 2002 letter from John Rudzinski, the International Benefit Representative for UAW's DaimlerChrysler Department, stating that the terms of the IPR were "totally different from a "regular retirement." (Plaintiff's Response, Ex. 10.) In particular, Rudzinski explained:

> Under normal circumstances, an employee has the

---

[2]Plaintiff has produced a memo, apparently authored by Nizich, indicating that Plaintiff was one of seven employees represented by Local 1264 who sought to revoke their acceptance of the IPR. (See Plaintiff's Response, Ex. 11)

> right to revoke their decision up till the last day of the month prior to the commencement of retirement benefits.
>
> However, as stated just above your signature on your acceptance of the offer, your decision is irrevocable after March 28, 2002. Additionally, this was explained at the informational meetings held for anyone interested in the incentive offer.

(Id.)

When Plaintiff reported for work as usual on July 1, 2002 she was told that she was now considered a retired employee, and she was escorted from the facility. To date, Plaintiff apparently has never completed the paperwork necessary to begin collecting retirement benefits. Instead, on July 3, 2002, Plaintiff sent a letter to the President of UAW Local 1264 protesting her removal from active employment. (See Plaintiff's Response, Ex. 12.) When Local 1264 declined to pursue her grievance, Plaintiff sent a letter to UAW President Ron Gettelfinger appealing this decision. In a letter dated December 5, 2002, Gettlefinger denied this appeal, stating:

> Your appeal to this office postmarked September 12, 2002 has been considered. Your submission chronicles the circumstances surrounding your contention that you should be returned to active employment.
>
> Investigation reveals that a 2002 Incentive Program for Retirements was offered at the Sterling Stamping Plant with a conditional offer period from March 13, 2002 through March 28, 2002 for eligible represented hourly employees. Eligible employees received a letter

explaining the offer in sufficient detail.

You have made your position the subject of an appeal to the Local Union Membership and the UAW National DaimlerChrysler Department. Unable to locate a violation of the agreement or a duty breached, both determined your appeal requires an interpretation of the agreement.

For the reasons cited above, the UAW International DaimlerChrysler Department has determined that the issues raised in your communications do not depict a violation of the Agreement; it requires an interpretation of the 2002 Incentive Program for Retirements Conditional Offer Letter. It is held that your election to separate under the Incentive Program for Retirements is irrevocable.

The UAW International DaimlerChrysler Department is responsible for negotiating and implementing the agreement and any supplement thereof. Because their interpretation is correct, I am ruling on this appeal pursuant to Article 33, Section 2(b) of the International Constitution.

The appeal is denied and there is no further appeal from this decision.

(Plaintiff's Response, Ex. 14.)

On June 26, 2002. while she was still pursuing her remedies under the CBA, Plaintiff commenced this action by filling a terse two-page *pro se* complaint seeking reinstatement to active employment. She subsequently

retained counsel, through whom she was filed a first amended complaint that more thoroughly present her allegations and theories of recovery. Specifically, this amended pleading advances breach of contract and breach of fiduciary duty claims against DaimlerChrysler, the UAW, and UAW Local 1264, arising under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., and Michigan common law. Although Plaintiff now concedes that she cannot pursue her state-law claim of wrongful discharge, she contends that she has produced sufficient evidence to sustain her theories of recovery.

III. ANALYSIS

A. The Standards Governing Defendants' Motions

Through their present motions, Defendants seek summary judgment in their favor pursuant to Federal Rule of Civil Procedure 56. Under this Rule, summary judgment is proper "if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In case, the record is limited and largely undisputed, resulting in a fairly straightforward Rule 56 inquiry. Accordingly, the Court now turns to this task.

B. Plaintiff Has Failed to Produce Evidence to Sustain

Either Prong of Her Hybrid § 301 Claim.

As noted, Plaintiff has acknowledged that the state-law theory of recovery asserted in her first amended complaint is preempted by federal law – specifically, § 301 of the LMRA, 29 U.S.C. § 185 – by virtue of Plaintiff's status as a member of UAW Local 1264 and the existence of a CBA between the union and her employer, DaimlerChrysler. Thus, to the extent that Plaintiff's claims rest upon an alleged breach of an obligation owed by her employer under CBA or a related, collectively bargained agreement, they are governed by the standards of so-called "hybrid § 301" claims. As this Court previously has observed:

> It is well-settled hat for a union employee to maintain an action for breach of a labor contract against his employer, he must also establish that his union breached its duty of fair representation. *Vaca v. Sipes,* 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rest on § 301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation. *Vaca v. Sipes, supra,*

---

[3]Because of the applicability of § 301 standards to the CBA and the IPR alike, the parties' various citation to Michigan court decisions are not particularly helpful here. Given the parties' apparent agreement that federal law governs the terms of Plaintiff's relationship with her employer, the Court fails to see why it should look to ruling on Michigan contract law.

> *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, S.Ct. 2281, 76 L.Ed.2d 476 (1983). The two claims are inextricably interdependent: To prevail against either the company or the Union, the employee-plaintiff must not only show that his discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union. *Id.*, 103 S.Ct. at 2290-91. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both. *Id.* at 2291.

Cotter v. DaimlerChrysler Corp., 87 F. Supp.2nd 746, 756 (E.D. Mich. 2000). Defendants argue, and the Court agrees, that Plaintiff cannot satisfy either prong of this standard.

First, regarding the breach-of-contract element of a hybrid § 301 claim, Plaintiff does not contend that DaimlerChrysler breached any provision of the inderlying CBA. Rather, her claim rests upon the terms of the letter she signed on March 25, 2002, reflecting her apparent acceptance of the early retirement offer extended through DaimlerChrysler's 2002 Incentive Program for Retirements ("IPR"). Although the parties do not address the point, it is evident to the Court that the IPR, as an agreement negotiated between DaimlerChrysler and the UAW that supplements the underlying CBA, should be "treated in the same manner as the collective bargaining agreement" itself. *Cotter*, 87 F. Supp.2d at 757.[3] In particular, to determine whether the IPR was breached, the Court looks first to "plain meaning of the agreement." *Roeder v. American Postal Workers Union*. AFL-CIO, 180 F.3d 733, 737 (6th Cir. 1999).

If the terms of the IPR are defined solely by reference to the letter and accompanying written materials received by Plaintiff, it is clear that DaimlerChrysler did not breach this agreement by refusing to allow Plaintiff to rescind her acceptance of the early retirement offer. The letter signed by Plaintiff states in the plainest terms that her acceptance was "***irrevocable after March 28, 2002*** by me or by others." (First Amended Complaint, Ex. A. (emphasis added).) The accompanying materials are fully consistent with this provision, stating at one point that "[i]f you accept this conditional offer, you must retire on the date indicated in your offer," subject only to certain conditions imposed by management at its discretion. (Plaintiff's Response, Ex. 3 IPR package at 2.) Plaintiff acknowledges that she read the letter before signing it, and she does not contend that she was in any way coerced into accepting the offer of early retirement. Moreover, Plaintiff concedes that she did not attempt to revoke her acceptance until June 5, 2002, cut-off date set forth in the letter.

Nonetheless, Plainiff suggests two theories under which DaimlerChrysler could be deemed to have breached the early retirement agreement. First, she cites the various places, in both the letter and the accompanying materials, where the offer of early retirement is characterized as "conditional." The letter itself, for example, is captioned "2002 Incentive Program for Retirements Conditional Offer Letter." Plainiff reasons that she was free to revoke her acceptance of this "conditional" offer until it was fully exccuted through the completion of her final retirement paperwork. Yet, as DaimlerChrysler points out, the letter itself plainly discloses the conditions upon the offer of early retirement: (i) that

"Management will make the final determination" of the employee's exact retirement date, choosing between April 30 and June 30, 2002; and (ii) that "Management will make a final selection of separations to be accepted under this Program on the basis of corporate service." (First Amended Complaint, Ex. A.) These conditions ran entirely in favor of the company – an acceptance of the early retirement offer, in other words, was conditional upon management's authority to make the final selection of which employee offers to accept. Nothing in these conditions gave Plaintiff the power to rescind her acceptance after March 28, 2002.

Next, Plaintiff suggests that the terms of the IPR were modified by virtue of the assurances of two union benefit representatives, Tom Nizich and Kathy Scorpio-Butina, that she could revoke her acceptance at any time before she completed her final retirement paperwork. As an initial matter, Defendants correctly note the absence of any evidence that these two employees, who evidently did not hold any sort of management position, had the authority to bind DaimlerChrysler or modify the terms of the IPR through their oral representations to Plaintiff.[4]

More importantly, federal labor law forecloses any possible recourse to an individual side agreement, whether written or oral, that is inconsistent with the terms of the underlying CBA. Plaintiff contends, in essence, that the verbal assurances of union representatives Nizich and Scorpio-Butina gave rise to an individual contractual right, over and above the terms of the IPR, to revoke her acceptance at any time before she completed her final retirement paperwork. Yet, "[a] collective bargaining agreement . . . supersedes an individual employment contract to the extent that they are

acceptance of the early retirement offer at any time prior to her execution of the final retirement documents.[5] Next, in making these alleged statements. Nizich and Scorpio-Butina surely intended and understood that Plaintiff would use this information in her decision whether to accept the early retirement offer. Indeed, Plaintiff testified testified that she signed the IPR letter immediately after she was assured that she could still revoke her acceptance.

The evidence regarding the second prong of a claim of a claim of estoppel is somewhat more equivocal, however. The record is wholly silent as to Nizich's or Scorpio-Butina's awareness of the "true fact" that Plaintiff's acceptance was not revocable after March 28, 2002. One could presume, perhaps, that these union representatives surely must have known this fact, by virtue of the plain language of the IPR letter disclosing this information.[6] Yet, other evidence produced by Plaintiff herself casts doubt on this assumption. In particular, the June 20, 2002 letter received by Plaintiff from John Rudzinski, an International Benfit Representative for the UAW DaimlerChrysler Department, states that an employee's decision concerning a "regular retirement" is revocable "up till the last day of the month prior to the commencement of retirement benefits." (Plaintiff's Response, Ex. 10.) Thus, it is possible that Nizich and Scorpio-Butina responded to Plaintiff's inquiry by providing this "regular retirement" information, perhaps unaware that the IPR was governed by

---

[5]Although these statements could also be construed as expressing a mere opinion – and not a particularly well-informed one, at that – the Court assumes for present purposes that they qualify as assertions of fact

different rules. Moreover, while the Sixth Circuit has recognized that a speaker's "apparent authority" might "satisfy (or at least...stand in for) the awareness element" of a claim of estoppel, *Anderson*, 147 F.3d at 477, the Court already has noted the absence of evidence that Nizich or Scorpio-Butina had the authority to bind either the union or DaimlerChrysler through their statements about the terms of the IPR.

In any event, no reasonable trier of fact could conclude that Plaintiff has satisfied the fourth or fifth elements of an estoppel-based theory of recovery. Under the fourth prong, Plaintiff must show that she was "unaware of the true facts." Yet, she was expressly told, in the language of the IPR letter appearing directly above her signature, that her acceptance of the early retirement offer was "irrevocable after March 28, 2002." The Sixth Circuit has held that the "unawareness" element of a claim of estoppel encompasses both the facts actually known to a party and those which the party had the means to ascertain. *Trustees of Michigan Laborers' Health Care Fund v. Gibbons*, 209 F.3d 587, 593 (6th Cir. 2000). Even if Plaintiff did not actually read the IPR letter before she signed it – and she achnowledged otherwise at her deposition – she readily could have ascertained the deadline for revoking her acceptance, merely by noting the explicit and unambiguous disclosure of this deadline is the letter itself.

---

[6]As discussed below, the self-evident nature of this fact might favor Plaintiff on this element of estoppel, but cuts sharply against her as to other elements.

For similar reasons, Plaintiff cannot establish that she detrimentally and justifiably relied on the representations of Nizich and Scorpio-Butina that she could revoke her acceptance beyond the March 28, 2002 deadline set forth in the IPR letter. In particular, while Plaintiff's deposition testimony indicates that she relied on these representations to her detriment, the evidence does not support a finding that this reliance was justified. In the analogous context of an ERISA-based claim of estoppel, the Sixth Circuit has emphasized that "party's reliance can seldom, if ever, be reasonable or justifiable if it is inconsistent with the clear and unambiguous terms of plan documents available to or furnished to the party." *Spraque v. General Motors Corp.*, 133 F.3d 388, 404 (6th Cir. 1998). The courts have adopted this reasoning in a number of other cases where the factual assertion purportedly relied upon is directly contradicted by the express, unambiguous terms of the parties' written agreement. *See, e.g., Gibbsons*, 209 F.3d at 593-94; *Armbruster v. K-II Corp.*, 206 F. Supp.2d 870, 894 (E.D. Mich. 2002); *Easa v. Florists' Transworld Delivery Ass'n*, 5 F. Supp.2d 522, 526-27 (E.D. Mich. 1998) Again, the IPR letter here was direct and unambiguous in establishing a deadline of March 28, 2002 for revocation, and Plaintiff would not have been justified in relying on the alleged assertions of union representatives to the contrary. Accordingly, the Court finds that the record fails to support the breach-of-contract prong of Plaintiff's hybrid § 301 claim.

In addition, it appears doubtful that Plaintiff could establish the second prong of this claim, a breach of the union's duty of fair representation. "To meet [her] burden of proof as to the union's breach of its duty of fair representation,

a plaintiff must establish by substantial evidence that the union acted arbitrarily, discriminatorily or with bad faith." *Cotter*, 87 F. Supp.2d at 756. Regarding the alleged misstatements of union representatives Nizich and Scorpio-Butina concerning Plaintiff's right to revoke her acceptance, the record indicates, a worst, that these statements rested upon a mistaken assumption that the "regular retirement" rules applied as well to the IPR. Such a mistaken judgment "would at most be negligence," and "[m]ere negligence is insufficient to establish a breach of the duty of fair representation." *Poole v. Budd Co.*, 706 F.2f 181, 184 (6th Cir. 1983). As for the union's decision not to pursue Plaintiff's grievance, the December 5, 2002 letter from UAW President Ron Gettelfinger sets forth the union's view that this grievance was based upon an interpretation of the IPR that the union deemed incorrect. These are "rational and objective grounds" for the union to decline to pursue Plaintiff's grievance, *Cotter*, 87 F. Supp.2d at 757, and therefore defeat any claim that the union acted arbitrarily, discriminatorily, or in bad faith in this matter.

C. Plaintiff Has Failed to State a Viable Claim under ERISA.

Having found no evidence to sustain a claim under § 301 if the LMRA, this leaves only Plaintiff's various ERISA-based theories of recovery. In support of their summary judgment motions, Defendant contend that ERISA does not reach the allegations made by Plaintiff in this case. The Court agrees.

The reach of ERISA is undeniably broad, superseding "any and all State laws insofar as they may now or hereafter

relate to any employee benefit plan." 29U.S.C. § 1144 (a). The IPR at issue here undoubtedly conferred "benefits" upon DaimlerChrysler employees, including a lump-sum severance payment and a credit toward the purchase or lease of a vehicle. Yet, in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 107 S. Ct. 2211 (1987), the Supreme Court held that ERISA did not preempt a Maine stature mandating one-time severance payments to employees in the event of a plant closing, reasoning that such a one-time payment did not give rise to an ongoing administrative scheme that reasonably could be termed a "plan."

Based on the reasoning of *Fort Halifax* and other Supreme Court decisions addressing the preemptive scope of ERISA, the courts have held that claims involving early retirement programs are not governed by ERISA, absent a substantial link between the claim and an employee benefit plan. In *Wells v. General Motors Corp.*, 881 F.2d 166, 175-76 (5th Cir. 1989), for example, the Fifth Circuit relied on *Fort Halifax* in concluding that a voluntary termination program with severance pay was not an "employee benefit plan" within the meaning of ERISA. Accordingly, the Court found that ERIA did not preempt the plaintiffs' state-law claims that they had been fraudulently induced to accept this program.

Similarly, in *Forbus v. Sears Roebuck & Co.*, 30 F.3d 1402, 1405-06 (11th Cir. 1994), the Eleventh Circuit found that ERISA did not preempt a claim that an employer had fraudulently induced the plaintiff employees to accept a retirement package by falsely stating that their facility was closing and their jobs would be eliminated. In so ruling, the Court distinguished prior cases in which employees had

retired in reliance on false representations about the retirement benefits they would receive. *See Forbus*, 30 F.3d at 1406. The Court reasoned that the alleged misrepresentation is the case before it "did not involve a benefit plan – it involved the very existence of the plaintiffs' jobs." 30F.d at 1406. Nor was a finding of preemption warranted, in the Court's view, by the "mere fact that the plaintiffs' damage may be affected by calculation of pension benefits." 30 F.3d at 1406-07.

This Court previously has reached a similar conclusion, albeit in the somewhat distinct context of "complete preemption." In *Hanks v. General Motors Corp.*, 26 F. Supp.2nd 977, 978-79 (E.D. Mich. 1998), the plaintiff employee had been receiving workers' compensation benefits for a number of years, and then inquired of her employer, defendant General Motors, whether these benefits would be jeopardized if she began collecting benefits from her employer-sponsored pension plan. A General Motors employee assured the Plaintiff that she could simultancously receive both workers' compensation and pension benefits, and she began drawing pension benefits in reliance on this representation. A short time later, her workers; compensation benefits were terminated pursuant to a coordinated benefits clause in the governing insurance policy. The plaintiff the brought suit in state court, asserting claims of fraudulent and negligent misrepresentation.

General Motors removed the case to federal court, contending that the plaintiff's state-law claims were completely preempted under ERISA. This Court remanded the case to state court, however, reasoning that the doctrine of complete preemption did not apply because the plaintiff was "not attempting to recover benefits due under the terms of" the

General Motors pension plan. *Hanks,* 26 F. Supp.2d at 983. Rather, the plaintiff sought "to rescind her decision to draw [pension] benefits on the ground that [her employer] allegedly made misrepresentations which led her to believe she was entitled to workers' compensation benefits ***in addition*** to the benefits due under the [pension plan] itself." 26 F. Supp.2d at 983. Thus, the Court found that the plaintiff's state-law claims "only tangentially implicate[d] the ERISA benefit plan" offered by her employer. 26 F. Supp.2d at 983.

Although *Hanks* addresses complete rather than ordinary preemption, it is entirely consistent with the above-cited decisions in recognizing that ERISA does not reach any and all claims that "tangentially implicate" an employee benefit plan. These rulings are fully applicable here. Where the lump-sum payments promised under DaimlerChrysler's IPR did not give rise to an "employee benefit plan" governed by ERISA. Nor do Plaintiff's claims and allegations directly implicate the terms of any employee benefit plan offered by her employer; she does not assert, for example, that her acceptance of the IPR offer was based upon any sort of misrepresentation about the types or amount of retirement benefits would receive.

Indeed, Plaintiff has given no reason whatsoever for seeking to revoke her acceptance. Rather, she more broadly asserts that the period of revocation had not yet closed at the time she changed her mind, so that she was free to revoke her acceptance for any reason whatsoever. As in *Forbus*, all alleged misrepresentation here concerns Plaintiff's right to continued employment, and not merely her right to a different level of benefits. Plaintiff seeks "to set aside and escape from the retirement agreement, not to recover under it or to 'enforce' it or to assert 'right to future benefits under the terms

of the plan.'" *Warner v. Ford Motor Co.*, 46 F.3d 531, 534 (6th Cir. 1995) (holding, as in *Hanks*, that such a claim is not completely preempted under ERISA). Although Plaintiff's plea for damages might encompass benefits under various DaimlerChrysler plans, the above-cited cases hold, and Sixth Circuit precedent confirms, that this sort of indirect involvement of an employee benefit plan does not trigger ERISA preemption. *See Wright v. General Motor Corp.*, 262 F.3d 610, 615 (6th Cir. 2001); *Fordus*, 30 F.3d at 1406-07. Consequently, the Court finds that ERISA affords no remedy in this case, and the Plaintiff's claims instead are governed by the standards of § 301 of the LMRA.

In any event, any such ERISA claim in this case would face considerable difficultly on the merits. Even if ERISA were deemed to govern the DaimlerChrysler IPR, ERISA plans, like CBAs, generally are resistant to attempts at oral modification. *See Spraque* 133 F.3d at 402-03. Consequently, Plaintiffs best resort again would be to an estoppel-base theory of recovery. Yet, the Sixth Circuit has applied precisely the same five-part estoppel standard to claims under the LMRA and ERISA alike. *See Spraque*, 133 F.3d at 403-04; *Armistead v. Veritron Corp.*, 944 F.2d 1287, 1298-1300 (6th Cir. 1991). Thus, in light of the unambiguous provisions of the IPR itself, a claim of estoppel here would fare no better under ERISA than under the LMRA. *See Spraque*, 1233 F.3d at 404.

This leaves only Plaintiff's contention that Defendants breached a fiduciary duty owed under ERISA. As explained in *Spraque*, an employer may act "in a fiduciary capacity when it explain[s] its retirement program to [its] early retirees." *Sprague*, 133 F.3d at 405. This rule extends only to explanations of "plan benefits," however, *see Sprague*, 133

F.3d at 405, and hence is unavailing to Plaintiff in this case, where the Court already has concluded that the IPR does not qualify as a "plan" under ERISA.

Moreover, the Court Previously has noted the complete absence of evidence that the individual who purportedly explained the IPR to Plaintiff, Tom Nizich and Kathy Scorpio Butina, and the authority to bind either Defendant through their statements. To be sure, the Court has little reason to doubt the assertion that individuals in the role of "union benefit representatives" have been granted the authority to answer the benefit questions of union members. Yet, such an assertion necessarily must rest upon ***some*** evidentiary foundation, and Plaintiff simply has failed to provide one here. Accordingly, Defendants are entitled to summary judgment in their favor on Plaintiff's ERISA-based theories of recovery.

IV. CONCLUSION

For the reasons set forth above,

NOW, THERFORE, IT IS HERBY ORDERD that Defendant DaimlerChrysler Corporation's February 28, 2003 Motion of Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Defendant UAW Local 1264's March 4, 2003 Motion for Summary Judgment also is GRANTED.

Gerald E. Rosen
United States District Judge

APPENDIX C - JUDGMENT OF DISMISSAL OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION DATED MARC 31, 2004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 02-72659
Hon. Gerald E. Rosen

JOYCE ANNE DABISH

Plaintiff,

v.

DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264

Defendants.

JUDGMENT OF DISMISSAL

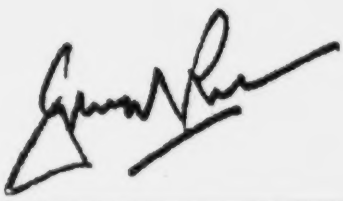
At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on *Mar 31, 2004*

PRESENT: Honorable Gerald E. Rosen
United States District Judge

Appendix C

The Court having this day entered an Opinion and Order granting Defendants' Motions for Summary Judgment,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this case be, and hereby is, DISMISSED.



Gerald E. Rosen
United States District Judge